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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NIKE, INC.)
and)
CONVERSE INC.,)
Plaintiffs,)
vs.)
QILOO INTERNATIONAL LIMITED)
Defendant.)

Case No. 2:12-cv-00191-GMN-GWF
**PRELIMINARY INJUNCTION
ORDER**

On February 6, 2012, Plaintiffs, NIKE, Inc., and Converse Inc., moved *ex parte* for a Temporary Restraining Order, Seizure Order, and an Order for Preliminary Injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Lanham Act Section 34 (15 U.S.C. § 1116), the Patent Act, 35 U.S.C. § 283, and Local Rule 7-5. (Dkt. No. 4). Plaintiffs alleged that Defendant QiLoo International Ltd. (“QiLoo”) imported into the United States, and was

1 distributing, promoting, offering to sell, and selling footwear products at the World Shoe
2 Association (“WSA”) trade show in Las Vegas, Nevada, that infringe Plaintiffs’ design patents
3 and trademarks. On February 7, 2012, the Court granted Plaintiffs’ Motion for Entry of
4 Temporary Restraining Order and Seizure Order (Dkt. No. 12), Plaintiffs posted a security bond
5 as directed by the Court (Dkt. No. 13), hand-served the Complaint, motion papers, and the
6 Court’s Order on QiLoo (Dkt. No. 18), and seized evidence of infringements (Dkt. No. 14).

8 Having identified additional infringing products during the seizure activities, Plaintiffs
9 moved on February 8, 2012, to amend the Temporary Restraining Order. (Dkt. No. 16). On
10 February 9, 2012, the Court granted Plaintiffs’ motion and entered an Amended Temporary
11 Restraining Order. (Dkt. No. 17).

12 In its February 7, 2012, Order, the Court directed QiLoo to respond to Plaintiffs’ motion
13 by February 10, 2012, and to appear for a preliminary injunction hearing on February 16, 2012.
14 QiLoo failed to serve any opposition and did not appear for the scheduled hearing.

16 Having duly considered Plaintiffs’ arguments at the hearing, and having also considered
17 the First Amended Complaint, the relevant Motions and Supporting Memorandum of Law, along
18 with the declarations and exhibits submitted therewith, the Court makes the following findings
19 and conclusions:

20 1. Plaintiffs are likely to succeed in showing that they own the NIKE Design Patents
21 and the Converse and NIKE Trademarks asserted in the First Amended Complaint, and that
22 those rights are valid and enforceable. Specifically: (A) NIKE is likely to establish that it owns
23 United States Design Patent Nos.: D361,884; D429,877; D462,830; D475,523; D494,353;
24 D499,247; D500,585; D500,917; D523,618; D524,028; D524,529; D532,600; D546,541;
25 D547,541; D555,332; D573,338; D573,339; D575,046; D578,294; D579,186; D580,636;
26 D580,646; D586,548; D641,968; and D642,369; (B) NIKE is likely to establish that it owns
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1 common law and registered trademark rights in the mark shown in United States Trademark
2 Registration No. 3,451,905; and (C) Converse is likely to establish that it owns common law and
3 registered trademark rights in the marks shown in United States Trademark Registration Nos.:
4 1,588,960; 1,998,884; 3,258,103; 4,062,112; and 4,065,482. NIKE's United States design
5 patents are presumed valid, 35 U.S.C. § 282, and Plaintiffs' trademark registration certificates
6 are *prima facie* evidence of the validity, ownership, and exclusive rights of Converse and NIKE
7 to use the registered trademarks. 15 U.S.C. § 1057.

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10 2. Plaintiffs are likely to succeed in showing that QiLoo has made, used, sold,
11 offered for sale, and/or imported into the United States shoes bearing designs that infringe the
12 NIKE Design Patents and that are counterfeits of the Converse and NIKE Trademarks (hereafter,
13 "Alleged Infringing Shoes"). It appears to the Court that QiLoo has not regularly or consistently
14 identified its shoes with distinguishing model numbers. Nevertheless, at least the following
15 QiLoo model numbers are associated with shoes bearing the designs of the NIKE Design Patents
16 or the Converse and NIKE Trademarks: QL-21193; QL-21533; QL-21712; QL-21810; QL-
17 23416; QL-23860; QL-24715; QL-25216; QL-25472; QL-26294; QL-27141; QL-27188; QL-
18 21103107A; QL-21103274A; QL-21103472A; QL-21103630A; QL-21103631A; QL-
19 21103631B; QL-21103929A; and QL-21104050A.

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22 3. QiLoo is a China-based manufacturer of footwear products that, with the
23 exception of its temporary presence in Las Vegas during the biannual WSA show, does not have
24 a regular place of business or assets in the United States. Over the past several WSA shows,
25 QiLoo has established a pattern of importing Alleged Infringing Shoes into the United States,
26 promoting, offering to sell, and selling those shoe designs at the WSA show, then leaving the
27 United States.
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1 4. Absent a preliminary injunction pending trial on the merits, QiLoo's manufacture,
2 use, sales, offers to sell, and/or importation into the United States of Alleged Infringing Shoes
3 will result in immediate and irreparable injury to Plaintiffs in the form of loss of control over
4 their valuable intellectual property rights, loss of consumer goodwill, and interference with
5 Plaintiffs' ability to exploit the NIKE Design Patents and the NIKE and Converse Trademarks.
6 *Gallagher Benefit Servs., Inc. v. De La Torre*, 283 Fed. Appx. 543, 546 (9th Cir. 2008); *Polymer*
7 *Techs., Inc. v. Bridwell*, 103 F.3d 970, 975-76 (Fed. Cir. 1996); *Farmer Brothers Co. v. Albrecht*,
8 2011 WL 4736858, *3 (D. Nev. October 6, 2011). In addition, because QiLoo has no presence
9 in the United States, Plaintiffs are likely to suffer irreparable harm because it may be difficult or
10 impossible for them to recover a money judgment against QiLoo. *Robert Bosch, LLC v. Pylon*
11 *Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) (citing *O2 Micro Int'l Ltd. v. Beyond*
12 *Innovation Tech. Co.*, 2007 WL 869576, at *2 (E.D. Tex. Mar. 21, 2007), vacated and remanded
13 on other grounds, 521 F.3d 1351 (Fed. Cir. 2008).

16 5. The harm to Plaintiffs in denying a preliminary injunction outweighs the harm to
17 the legitimate interests of QiLoo from granting such relief. Here, QiLoo's pattern of entering the
18 United States for purposes of selling Alleged Infringing Shoes for a period of just a few days
19 once every six months has hamstrung Plaintiffs' ability to effectively enforce their patent and
20 trademark rights. *NIKE, Inc. v. Meitac Int'l*, 2006 WL 3883278, *3 (D.Nev. 2006) (if defendant
21 is not enjoined, "Nike will be severely handicapped in its ability to prevent further importation of
22 infringing products, thereby destroying any potential of preserving the status quo pending a
23 resolution of this case on its merits."). On the other hand, QiLoo has many non-infringing
24 footwear designs it could sell instead of the Alleged Infringing Shoes. *Celsis In Vitro, Inc. v.*
25 *CellzDirect, Inc.*, 2012 WL 34381, *8 (Fed. Cir. Jan. 9, 2012). In view of the foregoing facts,
26 QiLoo took a calculated risk by returning to the United States to continue selling the Alleged
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1 Infringing Shoes and the balance of harms tips in Plaintiffs' favor.

2 6. The public interest weighs in favor of granting Plaintiffs a preliminary injunction,
 3 because this relief will promote an intellectual property system where rights can be effectively
 4 enforced and will protect the public from consumer confusion. *NIKE*, 2006 WL 3883278, *3;
 5 *Tile Outlet Always In Stock, Inc. v. Big Leaps, Inc.*, 2010 WL 5239229, at *3 (D. Nev. Dec. 16,
 6 2010). Any other result – particularly in view of QiLoo's failure to appear in opposition to this
 7 motion – would undermine the public's interest in Plaintiffs' continued incentives to create and
 8 invest in the manufacture of ornamental footwear designs.
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10 7. The Surety Bond posted on February 9, 2012 in the amount of \$25,000.00 for
 11 the Temporary Restraining Order has expired, and a new surety bond shall be posted by
 12 Plaintiffs, to remain in place until a trial on the merits.

13 **PRELIMINARY INJUNCTION**

14 **IT IS THEREFORE ORDERED** that QiLoo and its officers, agents, servants,
 15 employees, and attorneys; and all other persons acting in active concert or participation with any
 16 of them, are hereby preliminarily enjoined from making, using, selling, offering to sell, and/or
 17 importing into the United States any and all products bearing the designs, and colorable
 18 imitations thereof, shown in NIKE's United States Design Patent Nos: D361,884; D429,877;
 19 D462,830; D475,523; D494,353; D499,247; D500,585; D500,917; D523,618; D524,028;
 20 D524,529; D532,600; D546,541; D547,541; D555,332; D573,338; D573,339; D575,046;
 21 D578,294; D579,186; D580,636; D580,646; D586,548; D641,968; and D642,369. QiLoo is
 22 further preliminarily enjoined from using in commerce any reproduction, counterfeit, copy, or
 23 colorable imitation of the designs shown in NIKE's United States Trademark Registration No.
 24 3,451,905 and Converse's United States Trademark Registration Nos.: 1,588,960; 1,998,884;
 25 3,258,103; 4,062,112; and 4,065,482, including selling, offering for sale, distributing, promoting,
 26 or advertising goods or services in connection with the NIKE and Converse trademarks or
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1 colorable imitations thereof; and transferring, moving, returning, destroying, or otherwise
2 disposing of any Alleged Infringing Shoes except pursuant to an order of this Court.

3 Illustrative examples of Alleged Infringing Shoes bear model numbers QL-21193; QL-
4 21533; QL-21712; QL-21810; QL-23416; QL-23860; QL-24715; QL-25216; QL-25472; QL-
5 26294; QL-27141; QL-27188; QL-21103107A; QL-21103274A; QL-21103472A; QL-
6 21103630A; QL-21103631A; QL-21103631B; QL-21103929A; and QL-21104050A, and are
7 shown in Appendix 1 to this Order. The scope of this injunction applies to all products bearing
8 the designs of the design patents and trademarks listed above, including colorable imitations
9 thereof, regardless of any model number associated with the product, or any variations in color,
10 materials, or construction methods.

11
12 Plaintiffs shall forthwith serve this Order upon QiLoo by international courier to its
13 business address in Fujian, China and by email to qiloo@qiloo.com. QiLoo is hereby given
14 further notice that it shall be deemed to have actual notice of the issuance and terms of this
15 preliminary injunction and that any act by it in violation of any of the terms hereof may be
16 considered and prosecuted as contempt of this Court.

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18 **IT IS FURTHER ORDERED** that Plaintiffs shall post a new surety bond for \$25,000.00
19 to remain in place until the trial on the merits.

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21 **DATED and DONE** this 22nd day of March, 2012.

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24 _____
25 Gloria M. Navarro
26 United States District Judge
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